

**MF 01-21**  
**Tax Type: Motor Fuel Use Tax**  
**Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket No. 00-ST-0000</b>
<b>v.</b>	)	<b>Acct # 00-00000</b>
	)	<b>NTL # 00-000000 0</b>
<b>ABC OIL, INC.</b>	)	<b>NTL # 00-000000 0</b>
	)	
<b>Taxpayer</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Jim Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Chris W. Walters of Claudon, Kost, Barnhart, Beal & Walters, Ltd. for ABC Oil, Inc.

Synopsis:

The Department of Revenue ("Department") issued two Notices of Penalty for Motor Fuel Tax ("Notices") to ABC Oil, Inc. ("taxpayer"). The Notices alleged that the taxpayer sold or attempted to sell dyed diesel fuel for on-highway use and that the taxpayer failed to display a notice on its storage facility for dyed diesel fuel. The taxpayer timely protested the Notices and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On January 19, 2000, the taxpayer sold dyed diesel fuel to XYZ Township for on-highway use. (Dept. Ex. #1, 3)
2. On May 19, 2000 the Department issued NTL number 00-000000-0 to the taxpayer showing a penalty due of \$5,000 for selling dyed diesel fuel for use on the highways on January 19, 2000. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

3. On March 1, 2000, the taxpayer failed to display the notice “Dyed Diesel Fuel, Non-taxable Use Only” on its container, storage tank, or facility that is used to store or distribute dyed diesel fuel. (Dept. Ex. #2)

4. On May 19, 2000 the Department issued NTL number 43-336606-P to the taxpayer showing a penalty due of \$500 for the failure to display the required notice on its container, storage tank, or facility on March 1, 2000. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #2).

CONCLUSIONS OF LAW:

Subsection 16 of Section 15 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which became effective January 1, 2000, provides in part as follows:

“16. Any licensed motor fuel distributor or licensed supplier who sells or attempts to sell dyed diesel fuel for highway use shall pay the following penalty:

First occurrence.....\$ 5,000  
Second and each occurrence thereafter.....\$10,000

(35 ILCS 505/15).

Section 4f of the Act provides as follows:

“A legible and conspicuous notice stating “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use” must appear on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel.” (35 ILCS 505/4f)

Subsection 14 of Section 15 of the Act provides as follows:

“14. Any person who owns, operates, or controls any container, storage tank, or facility used to store or distribute dyed diesel fuel without the notice required by Section 4f shall pay the following penalty:

First occurrence.....\$ 500  
Second and each occurrence thereafter.....\$1,000” (35 ILCS 505/15)

The taxpayer contends that the penalties that were imposed in this case should be waived. The taxpayer argues that the Department has the burden of proof in this case and the Department did not present evidence that the fuel was used on the highway. The Department also did not present evidence that the taxpayer knowingly sold the fuel. The taxpayer claims that it was not aware that the sale of dyed diesel fuel to the township was illegal under Illinois law because federal law allows the sale of dyed diesel fuel to government agencies. The taxpayer also contends that the penalties should be waived because the taxpayer was the one who brought all of this to the attention of the Department.

The Department notes that the statute does not include the term “knowingly” or any other state of mind requirement. The Department’s Group Exhibit #3 includes the Bureau of Criminal Investigation Activity Report wherein the Department’s agent mistakenly stated that the fuel must be sold “knowingly.” The Department contends, however, that this report was made after the violation and was not relied upon by the taxpayer. In addition, the Department argues that nothing in the statute allows for the abatement of the penalty due to reasonable cause, and therefore there is no legal basis for waiving the penalty.

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copies of the NTLs were admitted into evidence. Once the NTLs were admitted into evidence, the Department’s position is presumed to be correct. In response, the taxpayer failed to present evidence indicating that it did not sell dyed diesel fuel for highway use or that it displayed the proper notice on its storage facility for dyed diesel fuel.

Furthermore, nothing in the statute allows for the abatement of the penalties if the taxpayer shows reasonable cause for the violations in question. The statute simply provides that the action or inaction on the part of the taxpayer requires the imposition of the penalties. Although the taxpayer may have been unaware of the change in the law, the taxpayer still had the duty to follow the newly enacted provisions.

Recommendation:

For the forgoing reasons, it is recommended that the penalties be upheld.

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Linda Olivero  
Administrative Law Judge

Enter: July 23, 2001